

Federal Railroad Administration, DOT

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a field test. All railroads should retain the discretion to limit the number of retests that an examinee can request but any cap placed on the number of retests should not limit retesting when changed circumstances would make such retesting appropriate. Changed circumstances would most likely occur if the examinee's medical condition has improved in some way or if technology has advanced to the extent that it arguably could compensate for a hearing or vision deficiency.

(5) Engineers who wear contact lenses should have good tolerance to the lenses and should be instructed to have a pair of corrective glasses available when on duty.

[64 FR 60996, Nov. 8, 1999]

PART 241—UNITED STATES LOCATION REQUIREMENT FOR DISPATCHING OF UNITED STATES RAIL OPERATIONS

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APPENDIX A TO PART 241—SCHEDULE OF CIVIL PENALTIES

APPENDIX B TO PART 241—GEOGRAPHICAL BOUNDARIES OF FRA'S REGIONS AND ADDRESSES OF FRA'S REGIONAL HEADQUARTERS

AUTHORITY: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

SOURCE: 66 FR 63959, Dec. 11, 2001, unless otherwise noted.

EFFECTIVE DATE NOTE: At 66 FR 63959, Dec. 11, 2001, part 241 was added, effective Jan. 10, 2002, through Jan. 10, 2003.

§ 241.1 Purpose and scope.

(a) The purpose of this part is to prevent railroad accidents and incidents,

and consequent injuries, deaths, and property damage, that would result from improper dispatching of railroad operations in the United States by individuals located outside of the United States.

(b) This part prohibits extraterritorial dispatching of railroad operations, conducting railroad operations that are extraterritorially dispatched, and allowing track to be used for such operations, subject to certain stated exceptions. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 241.3 Application and responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads.

(b) This part does not apply to—

(1) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(c) Although the duties imposed by this part are generally stated in terms of a duty of a railroad, each person, including a contractor for a railroad, who performs a function covered by this part, shall perform that function in accordance with this part.

§ 241.5 Definitions.

As used in this part:

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Dispatch means:

(1) To perform a function that would be classified as a duty of a "dispatching service employee," as that term is defined by the hours of service laws at 49 U.S.C. 21101(2), if the function were to be performed in the United States. In particular, *dispatch* means to use a telegraph, telephone, radio, or any other electrical or mechanical device, or hand delivery—

(i) To control the movement of a train or other on-track equipment by

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the issuance of a written or verbal authority or permission affecting a railroad operation or by establishing a route through the use of a signal or train control system but not merely by aligning or realigning a switch; or

(ii) To control the occupancy of a track by a roadway worker or stationary on-track equipment, or both; or

(iii) To issue an authority for working limits to a roadway worker.

(2) The term *dispatch* does not include the action of personnel in the field effecting implementation of a written or verbal authority or permission affecting a railroad operation or an authority for working limits to a roadway worker, or operating a function of a signal system designed for use by those personnel (e.g., initiating an interlocking timing device).

Dispatcher means a train dispatcher, control operator, yardmaster, or other individual who dispatches.

Emergency means an unexpected and unforeseeable event or situation that affects a railroad's ability to use a dispatcher in the United States to dispatch a railroad operation in the United States and that, absent the railroad's use of an extraterritorial dispatcher to dispatch the railroad operation, would either materially disrupt rail service or pose a substantial safety hazard.

Employee means an individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this part.

Extraterritorial dispatcher means a dispatcher who, while located outside of the United States, dispatches a railroad operation that occurs in the United States.

Extraterritorial dispatching means the act of dispatching, while located outside of the United States, a railroad operation that occurs in the United States.

FRA means the Federal Railroad Administration, United States Department of Transportation.

Movement of a train means the movement of one or more locomotives coupled with or without cars, requiring an air brake test in accordance with part 232 or part 238 of this chapter, except

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during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains.

Occupancy of a track by a roadway worker or stationary on-track equipment or both refers to the physical presence of a roadway worker or stationary on-track equipment, or both, on a track for the purpose of making an inspection, repair, or another activity not associated with the movement of a train or other on-track equipment.

Person means an entity of a type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; an owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; an independent contractor providing goods or services to a railroad; and an employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any person providing such transportation, including—

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Railroad contractor means a contractor to a railroad or a subcontractor to a contractor to a railroad.

Railroad operation means the movement of a train or other on-track equipment (other than on-track equipment used in a switching operation or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up a train), or the activity that is the subject of an

authority issued to a roadway worker for working limits.

Roadway worker means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities, or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts.

State means a State of the United States of America or the District of Columbia.

United States means all of the States.

Working limits means a segment of track with definite boundaries established in accordance with part 214 of this chapter upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track. Working limits may be established through "exclusive track occupancy," "inaccessible track," "foul time" or "train coordination" as defined in part 214 of this chapter.

§ 241.7 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions that the Administrator deems necessary.

§ 241.9 Prohibition against extraterritorial dispatching; exceptions.

(a) *General.* Except as provided in paragraphs (b), (c) and (d) of this section, a railroad subject to this part shall not require or permit a dispatcher located outside the United States to

dispatch a railroad operation that occurs in the United States if the dispatcher is employed by the railroad or by a contractor to the railroad.

(b) *Emergencies.* (1) In an emergency situation, a railroad may require or permit one of its dispatchers located outside the United States to dispatch a railroad operation that occurs in the United States, provided that:

(i) The dispatching railroad notifies the FRA Regional Administrator of each FRA region where the railroad operation was conducted, in writing as soon as practicable, of the emergency, and

(ii) The extraterritorial dispatching is limited to the duration of the emergency.

(2) Written notification may be made either on paper or by electronic mail.

(c) *Grandfathering.* A railroad may require or permit one of its dispatchers located in a foreign country or in a territory or possession of the United States to dispatch a railroad operation that occurs on a track segment located in the United States, the operation of which track segment was normally controlled during the month of December 1999 by a dispatcher located in that foreign country or that territory or possession of the United States.

(d) *Fringe border operations.* In order to facilitate the safety and efficiency of international train movements, railroad dispatchers located in Canada and Mexico may dispatch additional railroad operations in the United States immediately adjacent to their borders if all of the following conditions apply:

(1) The United States trackage being dispatched does not exceed 100 route miles;

(2) Except for unforeseen circumstances such as equipment failure, accident, casualty or incapacitation of a crew member, each train must be under the control of the same assigned crew for the entire trip over the trackage; and

(3)(i) Train movements on the rail line both originate and terminate in either Canada or Mexico without the pick up, set out, or interchange of cars in the United States; in other words, the traffic on the rail line is "bridge traffic" only; or